

## § 8.1

## 27 CFR Ch. I (4–1–00 Edition)

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AUTHORITY: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205; 44 U.S.C. 3504(h).

SOURCE: T.D. ATF–74, 45 FR 63256, Sept. 23, 1980, unless otherwise noted.

### Subpart A—Scope of Regulations

#### § 8.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify arrangements which are exclusive outlets under section 105(a) of the Act and criteria for determining whether a practice is a violation of section 105(a) of the Act. This part does not attempt to enumerate all of the practices prohibited by section 105(a) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF–364, 60 FR 20425, Apr. 26, 1995]

#### § 8.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

#### § 8.3 Application.

(a) *General.* This part applies only to transactions between industry members and retailers. It does not apply to transactions between two industry members; for example, between a producer and a wholesaler.

(b) *Transactions involving State agencies.* The regulations in this part apply only to transactions between industry members and State agencies operating as retailers as defined in this part. The regulations do not apply to State agencies with regard to their wholesale dealings with retailers.

#### § 8.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) The industry member requires, by agreement or otherwise, a retailer to purchase distilled spirits, wine, or malt beverages from such industry member to the exclusion in whole or in part of products sold or offered for sale by other persons in interstate or foreign commerce; and

(2) If: (i) The requirement is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in the practice of using a requirement to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) The direct effect of the requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(a) of the Federal Alcohol Administration Act (27 U.S.C. 205(a)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State.

#### § 8.5 Administrative provisions.

(a) *General.* The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Director under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Director under this Act. The Act also provides that the Director is authorized to require, in such manner and such form as he or she shall prescribe, such reports as are necessary to carry out the powers and duties under this chapter.

(b) *Examination and Subpoena.* The Director or any authorized ATF officers shall at all reasonable times have

access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. The Director shall also have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing that the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

(c) *Reports required by the Deputy Associate Director (Regulatory Enforcement Programs)*—(1) *General*. The Deputy Associate Director (Regulatory Enforcement Programs) may, as part of a trade practice investigation of an industry member, require such industry member to submit a written report containing information on sponsorships, advertisements, promotions, and other activities pertaining to its business subject to the Act conducted by, or on behalf of, or benefiting the industry member.

(2) *Preparation*. The report will be prepared by the industry member in letter form, executed under the penalties of perjury, and will contain the information specified by the Deputy Associate Director (Regulatory Enforcement Programs). The period covered by the report will not exceed three years.

(3) *Filing*. The report will be filed in accordance with the instructions of the Deputy Associate Director (Regulatory Enforcement Programs).

(Approved by the Office of Management and Budget under control number 1512-0392)

[T.D. ATF-364, 60 FR 20425, Apr. 26, 1995]

## Subpart B—Definitions

### § 8.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

*Act*. The Federal Alcohol Administration Act.

*ATF officer*. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

*Deputy Associate Director (Regulatory Enforcement Programs)*. The principal ATF headquarters official responsible for administering regulations in this part.

*Director*. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

*Industry member*. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

*Product*. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

*Retailer*. Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

T.D. ATF-74, 45 FR 63256, Sept. 23, 1980, as amended by T.D. ATF-364, 60 FR 20425, Apr. 26, 1995]

## Subpart C—Prohibited Practices

### § 8.21 General.

It is unlawful for an industry member to require, by agreement or otherwise, that any retailer purchase distilled spirits, wine, or malt beverages from the industry member to the exclusion, in whole or in part, of products sold or offered for sale by other persons in interstate or foreign commerce. This prohibition includes purchases coerced by industry members, through acts or threats of physical or economic harm, as well as voluntary industry member-retailer purchase agreements.